

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

FILED BY CLERK

JUNE 28 2007

COURT OF APPEALS
DIVISION TWO

THE STATE OF ARIZONA,

Appellee,

v.

MANUEL M. DIAZ,

Appellant.

2 CA-CR 2006-0234

DEPARTMENT A

MEMORANDUM DECISION

Not for Publication

Rule 111, Rules of
the Supreme Court

APPEAL FROM THE SUPERIOR COURT OF GILA COUNTY

Cause No. CR20030258

Honorable Peter J. Cahill, Judge

AFFIRMED

Emily Danies

Tucson
Attorney for Appellant

V Á S Q U E Z, Judge.

¶1 After a jury trial in April 2006, appellant Manuel Diaz was convicted of attempted second-degree murder and two counts of aggravated assault. All of these convictions arose from Diaz's shooting his former wife in April 2003. The jury found as an aggravating circumstance that Diaz had caused emotional harm to the victim. The trial court

also found the presence of three mitigating factors: the absence of any known prior felony convictions, Diaz’s “steady employment history,” and his “good conduct while in custody.” The court sentenced Diaz to presumptive, concurrent sentences of five years for attempted second-degree murder, 7.5 years for aggravated assault with a deadly weapon or dangerous instrument, and one year for aggravated assault while an order of protection was in place.¹

¶2 Counsel has filed a brief in compliance with *Anders v. California*, 386 U.S. 738, 87 S. Ct. 1396 (1967), and *State v. Clark*, 196 Ariz. 530, 2 P.3d 89 (App. 1999), stating that she has thoroughly reviewed the record on appeal and has found no arguable issues to raise. She asks this court to search the entire record for fundamental error. Diaz has filed a supplemental brief in which he claims he is entitled to a new trial or “dismiss[al]” of his convictions. We understand his arguments to be first, that he was incompetent to stand trial, and second, that there was insufficient evidence to support his convictions because, according to Diaz, there was no evidence that the victim had been killed or “even admitted into the hospital.” We affirm.

¹On his attempted second-degree murder conviction, the trial court had initially imposed a sentence of 10.5 years, the presumptive sentence for a class two felony involving the use of a deadly weapon resulting in the intentional or knowing infliction of a serious physical injury. See A.R.S. § 13-604(I). However, the record clearly shows that, because the state had not filed the requisite allegations to justify sentencing Diaz pursuant to § 13-604(I), the trial court had intended to impose a presumptive sentence for this class two felony as a nondangerous offense. After sentencing, the state noted the discrepancy and moved for a “correct[ed]” sentence. The trial court granted the motion, declined the state’s invitation to reweigh the aggravating and mitigating factors it had previously found justified imposition of a presumptive sentence, and thus sentenced Diaz to a presumptive term of five years. See A.R.S. § 13-701(C).

¶3 Pursuant to our obligation under *Anders*, we have reviewed the entire record. We are satisfied that an abundance of reasonable evidence established all necessary elements of the crimes of which Diaz was convicted, namely attempted second-degree murder in violation of A.R.S. §§ 13-1104(A)(1) and 13-1001, and two counts of aggravated assault in violation of A.R.S. § 13-1204(A)(2) and (A)(15). Our review of the pretrial and sentencing proceedings likewise has shown the presence of no errors that can be characterized as fundamental and prejudicial. *See State v. Henderson*, 210 Ariz. 561, ¶ 19, 115 P.3d 601, 607 (2005).

¶4 Diaz has cited no legal authority, and we are aware of none, for his implied proposition that the state was required to present evidence to the jury concerning the pretrial competency proceedings the trial court had conducted pursuant to Rule 11, Ariz. R. Crim. P., 16A A.R.S. And, despite Diaz's claims to the contrary, the record shows that in May 2005, the trial court found Diaz competent to stand trial based on the findings and conclusions set forth in a report submitted by Dr. Barry Morenz of the University of Arizona Health Sciences Center. Finally, although Diaz is correct that the victim of his crimes survived and attended court hearings in this matter, her survival in no way undermines the jury's verdicts. Diaz is convicted of *attempted* second-degree murder and two counts of aggravated assault, none of which includes as an element the death of or serious physical injury to any person. *State v. Cleere*, 213 Ariz. 54, ¶¶ 5-6, 138 P.3d 1181, 1184 (App. 2006). Moreover, to the extent the state was required to prove the victim had

been injured, substantial evidence established she had suffered multiple gunshot wounds inflicted by Diaz.

¶5 Accordingly, Diaz’s convictions and sentences are affirmed.

GARYE L. VÁSQUEZ, Judge

CONCURRING:

JOHN PELANDER, Chief Judge

JOSEPH W. HOWARD, Presiding Judge